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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNIED STATES,

ECF CASE

10 Cr. 88 (LMM)

vs.

GERMAN DE JESUS TRUJILLO-CACERES,

Defendant.

SENTENCING MEMORANDUM



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May 25, 2010

BY HAND DELIVERY

Hon. Lawrence M. McKenna
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: United States v. German de Jesus Trujillo-Caceres
10 Cr. 88 (LMM)

Dear Judge McKenna:

This letter is respectfully submitted in connection with the sentencing of German de Jesus Trujillo-Caceres ("German") and in support of his application for a non-guidelines sentence below the sentencing range recommended by the now-advisory Sentencing Guidelines. German is scheduled to be sentenced by Your Honor on June 9, 2010, at 4:15 p.m.

As will be set forth more fully below, the imposition of a sentence below that recommended by the Sentencing Guidelines, as permitted pursuant to United States v. Booker, 125 S. Ct. 738 (2005) ("Booker"), would be reasonable in light of the factors outlined in 18 U.S.C. §3553(a).

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I. German's Personal History

German was born out of wedlock to German Trujillo and Gloria Caceres on May 18, 1958 in San Salvador, El Salvador. German's father is 73 and presently living in Puerto Rico; he worked as a bus driver before his retirement. German's mother, Gloria, was a homemaker. She died in 1986.

As he describes it, German grew up "very poor and poverty stricken." His family lived in a shack in San Salvador.

When German was in his teens, his father left his mother and immigrated to the United States. In 1977, German's father was granted permanent resident status and he brought German to the United States to live with him. German never again saw his mother.

Although the avowed goal of German's immigration to the United States was to complete his schooling, the education he had hoped to attain never materialized. Indeed, the family's financial situation was so dire that German never even began his studies in the United States; upon arriving in the country he immediately entered the work force to aid in supporting himself and the family.

Tragically, the defining feature of German's life came to be his steady and regular abuse of alcohol and drugs. German's addiction to illicit substances began at an early age and has continued unabated through the present day.

German relates that when he was a young boy, his mother regularly fed him an alcoholic drink made of fermented fruit. German grew up drinking all types of alcohol, developing a special fondness for beer.

Illegal drugs soon followed. German began smoking marijuana at age 9; injecting heroin at age 19; snorting cocaine at age 20; and smoking crack a few years later. For the past 30 years, heroin has been German's drug of choice, injecting a gram a day to satisfy his addiction. If German initially began to work to support himself and his family, the ends of his labors quickly changed. In his own words, German "worked to get high."

German's substance abuse quickly led to his estrangement from his family. In 1980, German moved out of his

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father's home in New Jersey, never to return. He stopped all communication with his parents around this time, his addiction to drugs serving to isolate him from those closest to him. This isolation extended to his relationships with his siblings. German has five half-siblings on his mother's side and two on his father's side. Of the seven, German can presently remember the names of only two. He doesn't know where any of his siblings currently live or work and he hasn't spoken to any of them since he left his father's home 30 years ago.

Numerous attempts at treatment while incarcerated or on parole have been unsuccessful in curbing German's appetite for illicit substances. Not surprisingly, while incarcerated at FCI Butner in 1999, German was diagnosed as having Polysubstance Dependence.

Compounding German's history of substance abuse is a history of mental illness. While incarcerated at FCI Butner, German was also diagnosed with Major Depressive Disorder. Although German was well aware of his substantial substance abuse issues, his mental health problems had apparently gone undiagnosed - and untreated - for a very long time. The psychiatric report from FCI Butner noted that German's depression was cyclical and that medication was an effective treatment, but, of course, only when a treatment regimen was followed.

While in custody on the instant offense, German was diagnosed with Hepatitis C.

II. What Sentence To Impose

In a post Booker environment, where the sentencing guidelines are no longer mandatory, the decision on what sentence to impose is the most difficult question to answer. Booker, and more recently Rita, Gall and Kimbrough, require the district court to tailor sentences to reflect an application of the 18 U.S.C. § 3553(a) factors, with the expectation that post-Booker sentences will achieve more "individualized justice." See United States v. Crosby, 397 F.3d 103, 114 (2nd Cir. 2005). Thus, courts "may sentence outside the Guidelines range on facts and circumstances particular to the individual defendant and his crime." United States v. Gerard Cavera, aka Gerry Lake and Peter Abbadessa, 2007 WL1628799, *4 (2nd Cir. 2007) (emphasis in

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original), citing United States v. Rattoballi, 452 F.3d 127, 133 (2nd Cir. 2006).

In a decision upholding a district court judge's non-guidelines sentence, United States v. Jones, 460 F.3d 191 (2nd Cir. 2006) ("Jones"), the Second Circuit observed that,

In light of the enhanced scope of a sentencing judge's discretion in the post-Booker world of advisory Guidelines... a judge is not prohibited from including in that consideration the judge's own sense of what is a fair and just sentence under all the circumstances.

Id. at 195 (emphasis added).

Pursuant to Booker, the Court must not only consider the sentencing guidelines, but also the factors set forth in 18 U.S.C. § 3553(a) which, among other things, include the history and characteristics of the defendant and the broader and more general purpose of sentencing which includes retribution and general deterrence.

One would be hard-pressed to find a more pathetic defendant in this courthouse than German. German is homeless, mentally ill and drug-addicted. German's lengthy criminal history involving theft and drug offenses is proof only of the cyclically depressive, drug-abuser that he is. Indeed, the most egregious offenses in his criminal history - and the one for which he finds himself before this court - are his repeated attempts to get into this country, by whatever means necessary, even after repeated stints of incarceration and repeated deportation.

It would not be an overstatement to say that German is among the wretched of the earth. His lifelong addiction to drugs and alcohol has isolated him from his family, so much so that during his presentence interview, German refused to provide the names of any family or friends to speak on his behalf, telling the probation officer that "he has his life and they have theirs." He has been estranged from his father and now deceased mother for over 30 years. He has been out of touch with his siblings for the same period of time. He never married and has fathered no children.

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Judge Rakoff noted in his well-reasoned sentencing opinion in United States v. Adelson, 441 F.Supp2d 506 (S.D.N.Y. 2006) ("Adelson"), that letters from a defendant's family or friends attesting to what can best be described as his "good deeds" are particularly relevant at the time of sentencing:

[S]urely, if ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all the great religions, moral philosophies, and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, "the history and characteristics of the defendant."

Adelson, 441 F.Supp2d at 513-14.

Tragically, German has not a single person to speak even one kind word on his behalf; he has no one at all to vouch for his humanity.

Bereft of the support of family or friends it is hardly surprising that German has been unable to break the twin cycles of depression and addiction that have come to dominate and define his life.

While there is no doubt that German's behavior warrants punishment, it is respectfully submitted that a prison term below the guidelines range is more than sufficient to achieve those limited goals of sentencing that any sentence imposed on German reasonably can be expected to accomplish.

German is not a prominent public figure and this case has not achieved any notoriety. Therefore, sentencing German to a prison term at the top of the guidelines range will not send a message to the general public that this type of crime will be severely punished, nor will it serve to discourage others from attempting to reach the United States by illegal means.

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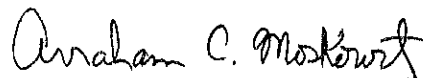
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As for the goals of specific deterrence and retribution, it is respectfully submitted that a reasonable sentence of imprisonment below the advisory guidelines range is more than sufficient to satisfy the ends of justice. It may be that in this case, no prison sentence will be effective in deterring German from attempting to re-enter the country after he is deported again. Ironically, a lengthy prison term will merely give German what he has been seeking - an opportunity to stay in the United States. It somehow seems illogical to sentence German to stay in the United States for a lengthy period of time at the taxpayers' expense for the crime of re-entering the country illegally. The only effective way to deter German from re-entering the United States illegally may be to strengthen our border defenses, a result that is beyond this Court's power to achieve. Accordingly, a jail sentence below the guidelines range would be more than sufficient to satisfy the goals of punishment and, given the factors set forth in 18 U.S.C. § 3553(a) and this defendant's particular history and characteristics, will more than adequately serve the ends of justice.

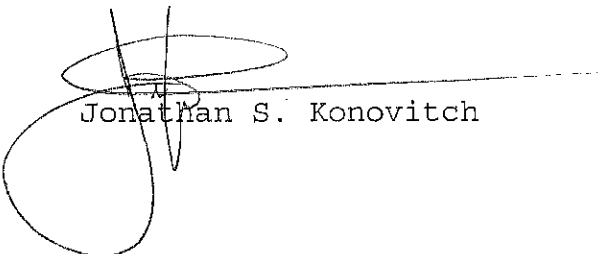
CONCLUSION

It is respectfully requested that this Court temper justice with mercy and impose a reasonable, non-guidelines sentence below the guidelines range.

Respectfully submitted,



Avraham C. Moskowitz



Jonathan S. Konovitch

cc: AUSA Alvin L. Bragg, Jr. (By Hand)